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Nos. 01-1224 and 01-1226

In the Supreme Court of the United States

TRUCKEE-CARSON IRRIGATION DISTRICT, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

STATE OF NEVADA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in holding that, in determining whether water rights held by individual water users in the Newlands Reclamation Project in Nevada are exempted from forfeiture pursuant to Section 533.085 of Nevada Revised Statutes Annotated, the date on which the appropriation was initiated is the date on which the individual landowner took the first steps to appropriate project water appurtenant to his land.

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In the Supreme Court of the United States

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TRUCKEE-CARSON IRRIGATION DISTRICT, PETITIONER

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A26)[1] is reported at 256 F.3d 935. The opinion of the district court (Pet. App. B1-B21) is not reported.

[1] The citations to "Pet. App." refer to the petition for a writ of certiorari filed by the State of Nevada, No. 01-1226.

JURISDICTION

The judgment of the court of appeals was entered on July 5, 2001. Petitions for rehearing were denied on November 8, 2001 (Pet. App. D2-D3). The petitions for a writ of certiorari were filed on February 6, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The United States and the Pyramid Lake Paiute Tribe challenged the Town of Fernley's application to the Nevada State Engineer for a change in the manner and place of use of approximately 280 acre-feet of water from the Newlands Reclamation Project. The district court rejected the United States' and the Tribes' contentions that the water rights had been forfeited or abandoned under Nevada law. Pet. App. B1-B21. The court of appeals reversed and remanded for further proceedings. *Id.* at A1-A26.

1. Nevada enacted its first comprehensive water code in 1913. That statute contained a provision for forfeiture of water rights, stating that any water right not used during a period of five successive years was forfeited:

> [I]f the owner or owners of any such ditch, canal, reservoir, or any other means of diverting any of the public water fail to use the water therefrom or thereby for beneficial purposes for which the right of use exists during any 5 successive years, the right to so use shall be deemed as having been abandoned, and any such owner or owners thereupon forfeit all water rights, easements and privileges appurtentant thereto theretofore acquired * * *.

Nev. Rev. Stat. Ann. § 533.060(2) (Michie 1995). The statute also contained a savings clause, exempting certain water rights from forfeiture:

> Nothing contained in this chapter shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this chapter where appropriations have been initiated in accordance with law prior to March 22, 1913.

Id. § 533.085(1). Those laws apply to the water rights at issue in this case.[2]

2. The Department of the Interior's Bureau of Reclamation administers the Newlands Reclamation Project, which diverts water from the Truckee and Carson Rivers in Nevada to provide water for irrigation. Pet. App. A6. Since 1926, except for a period of time during the 1970s and 1980s, the Truckee-Carson Irrigation District (TCID) has operated the Newlands Project through contractual arrangements with the Department of the Interior. Beneficial rights to the use of Project water are held by individual landowners pursuant to contracts with the Department of the Interior. *Ibid.*

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[2] In 1999, the Nevada legislature amended Section 533.060(2) of the Nevada Revised Statutes Annotated to exempt all surface water rights in Nevada from statutory forfeiture. See Act of June 9, 1999, ch. 515, §§ 1, 3, 1999 Nevada Stat. 2630, 2631 (A.B. No. 380) (adding a new section to, and amending, Section 533.060(3)). Section 7 (1999 Nev. Stat. 2634) however, states that the provisions of the Act addressing forfeiture and abandonment of Nevada water rights do not apply to water rights that were challenged in any legal or administrative proceeding as of April 1, 1999, which includes the water rights in this case.

The Newlands Project diverts water from the Truckee River into the Truckee Canal, which joins the Carson River at Lahontan Reservoir. Pet. App. A6. Water from the Truckee Canal is used to irrigate nearby lands in the "Truckee Division" of the Project. The combined waters of the Truckee Canal and the Carson River in Lahontan Reservoir provide water to irrigate lands in the "Carson Division" of the Project. *Ibid.*

Water rights in the Truckee Division of the Project are governed by the *Orr Ditch* decree, which awarded the United States the right to divert a specified amount of water from the Truckee River with a priority date of July 2, 1902. See *United States* v. *Orr Water Ditch Co.*, In Equity, Docket No. A3 (D. Nev. Sept. 4, 1944) (reprinted in part at Pet. App. E1-E19). Water rights in the Carson Division are governed by the *Alpine* decree, which awarded the United States the right to divert and store the entire flow of the Carson River as it reaches Lahontan Dam, also with a priority date of July 2, 1902. See *United States* v. *Alpine Land & Reservoir Co.*, 503 F. Supp. 877 (D. Nev. 1980), aff'd, 697 F.2d 851 (9th Cir.), cert. denied, 464 U.S. 863 (1983).

The Truckee River terminates in, and is the main source of water for, Pyramid Lake. That lake, which is "widely considered the most beautiful desert lake in North America," *Nevada* v. *United States*, 463 U.S. 110, 114 (1983), is the central feature of the Pyramid Lake Paiute Tribe's reservation and habitat for two species of fish listed under the Endangered Species Act, 16 U.S.C. 1531 *et seq.* Pet. App. 6-7. The Newlands Project's diversions of water from the Truckee River have adversely affected the size and ecology of the lake and are largely responsible for the threats to the lake's fish. *Id.* at 7. The United States is required by court

order and by statute to ensure that water diversions from the Truckee River are limited to those waters necessary to serve valid water rights of Project water users. See Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990, Pub. L. No. 101-618, §§ 202, 209, 104 Stat. 3294, 3317; *Pyramid Lake Paiute Tribe of Indians* v. *Morton*, 354 F. Supp. 252, 256 (D.D.C. 1973).

3. The Town of Fernley filed an application with the Nevada State Engineer to change the manner and place of use of 26 Project water rights it had acquired for use of water from the Newlands Project. Those water rights encompassed a total of roughly 280 acre-feet of Project water. Pet. App. A6. The United States and the Tribe filed protests to the application on several grounds, including an objection that the water rights proposed for transfer had been forfeited or abandoned under state law and therefore could not be transferred. *Id.* at A7. Those protests are subject to a series of federal court rulings that govern challenges to transfer applications. See *id.* at A9.

The legal disputes culminating in the 1980 *Alpine* decree established that applications for transfers of Newlands Project water rights are to be directed to the State Engineer, who has primary administrative jurisdiction under Nevada law to review such applications. See *United States* v. *Alpine Land & Reservoir Co.*, 697 F.2d 851, 857-858 (9th Cir.), cert. denied, 464 U.S. 863 (1983) (*Alpine I*); see also Nev. Rev. Stat. Ann. §§ 533.345, 533.370 (Michie 1995). The decision further states that appeals from the State Engineer's determinations are to be taken to the United States District Court for the District of Nevada, which expressly retained jurisdiction to supervise and enforce its decree. *Alpine I*, 697 F.2d at 857-858.

After the *Alpine* decree became final, many farmers who used Project water filed applications to transfer water rights from an existing location to other locations within the Project area. The Tribe challenged certain transfers on various grounds, including the ground that the water rights proposed for transfer had been forfeited or abandoned and therefore were not valid rights available for transfer. *United States* v. *Alpine Land & Reservoir Co.*, 878 F.2d 1217 (9th Cir. 1989) (*Alpine II*). The district court held that Nevada law was inapplicable to the validity of the transfer applications, but the court of appeals disagreed, reversing the district court's decision and remanding the case for further proceedings. *Ibid.*; see also Pet. App. A9.

Following that remand, the State Engineer ruled that, for the purposes of applying the state forfeiture statute, the water rights of all individual users in the Newlands Project vested on July 2, 1902, the priority date assigned by the *Orr Ditch* and *Alpine* decrees to the Newlands Project water rights as decreed to the United States. Because the forfeiture statute did not apply to water rights vesting prior to March 22, 1913, the Engineer concluded that the water rights of individual users of Newlands Project water were not subject to forfeiture. The district court affirmed the State Engineer's determinations respecting forfeiture, but the court of appeals reversed the district court's decision. *United States* v. *Alpine Land & Reservoir Co.*, 965 F.2d 731 (1992), as amended, 983 F.2d 1487 (9th Cir. 1993) (*Alpine III*); see Pet. App. A9-A10. The court of appeals held that the applicability of the state forfeiture statute was determined not by the United States' 1902 priority date for the Project as a whole, but rather by the date on which each individual water user initiated the appropriation of water from the Project

and took the first steps to put the water to beneficial use on a particular farm parcel. 983 F.2d 1495-1496.

The court of appeals reasoned that, according to the Nevada Supreme Court, the Nevada legislature's purpose in exempting pre-1913 rights from impairment by the new water law regime was "'to refrain from infringing upon rights which had accrued at that time, so as to avoid any question of the constitutionality of the act.'" *Alpine III*, 983 F.2d at 1496 (quoting *In re Manse Spring*, 108 P.2d 311, 315 (Nev. 1940)). The court of appeals accordingly determined that, because the purpose of Section 533.085(1) of Nevada Revised Statutes Annotated was to insulate from forfeiture those water rights where "appropriations have been initiated" (Nev. Rev. Stat. Ann. § 533.085(1) (Michie 1995)), "it would not make sense to grant to every farmer a Project water right with a 1902 vesting date regardless of when the farmer actually obtained the right to irrigate his land." 983 F.2d at 1496; see Pet. App. A12-A13. The court held that "[i]f the right vested before March 22, 1913, or if the appropriation of the right was initiated in accordance with the law in effect prior to that date, then it is not subject to possible forfeiture under NRS 533.060." 983 F.2d at 1496; see Pet. App. A14.

4. Notwithstanding the United States' and the Tribe's protests, the Nevada State Engineer approved Fernley's application to change the manner and place of use of the water rights in this case. Pet. App. C1. The State Engineer determined, among other things, that the water rights in Fernley's transfer application were not subject to forfeiture under Nevada's forfeiture statute because the appropriation of those rights was initiated prior to March 22, 1913. *Id.* at A8, C9. The State Engineer was of the view that *Alpine*

III addressed only the question of when Newlands Project water rights vested in the individual users and not when appropriations were initiated. He concluded that appropriation of the rights was initiated on July 2, 1902, the priority date confirmed to the Project water rights as a whole.

To reach that conclusion, the State Engineer applied the State's "relation back" doctrine, under which a water right's priority date is determined by the time when the first step was taken to secure it. Pet. App. C7-C8. The Engineer concluded that the first step was taken to secure the rights for all Newlands Project water users when the United States obtained water rights for the Project as a whole in 1902. *Ibid.* Despite his conclusion that none of the rights were subject to forfeiture, the State Engineer nevertheless conducted a factual analysis to determine whether, if the court were to determine that the rights were initiated on the date the users took their first steps to obtain water from the Project, any of the rights would be forfeited. The Engineer found that forfeiture had been proven with respect to only one of the water rights proposed for transfer. See *id.* at C10-C13; see also *id.* at A19.

The State Engineer also made factual determinations as to whether any of the water rights had been abandoned. Water rights that were initiated prior to March 22, 1913, are not subject to forfeiture but are subject to abandonment. The Engineer found that the record contained no evidence of intent to abandon any of the water rights. Pet. App. C13-C14.

5. The district court affirmed the ruling of the Nevada State Engineer. Pet. App. B1-B21. On the question of forfeiture, the district court affirmed the State Engineer's ruling that all of the water rights were exempt from forfeiture under Section 533.085 of

Nevada Revised Statutes Annotated. The district court did not address the State Engineer's analysis or *Alpine III*. Instead, the district court determined that the *Orr Ditch* decree awarded a July 2, 1902, priority date for all individual water rights within the Newlands Project governed by the decree and that, for the purposes of Section 533.085 of the Nevada Revised Statutes Annotated, appropriation of the water rights of individual users of Newlands Project water was initiated on that date. *Id.* at B5-B20. The district court did not address the State Engineer's factual determinations as to whether the water rights had been forfeited, see *id.* at A19, but affirmed the State Engineer's ruling that none of the water rights at issue had been abandoned, *id.* at B20.

6. The court of appeals reversed the district court's judgment. Pet. App. A1-A26. On the issue of forfeiture, the court of appeals concluded that the question of how to interpret the forfeiture exemption had been previously decided in *Alpine III*. The court of appeals rejected the State Engineer's argument that the forfeiture ruling in *Alpine III* pertained only to when Project water rights were vested in the individual users and not to when appropriation of those rights was initiated. *Id.* at A14-A16. The court reiterated its reasoning in *Alpine III*: The purpose of the forfeiture exemption was to alleviate concerns about unfairness and unconstitutionality and that, given that purpose, the term "initiated" should not be read to refer to the date on which the United States obtained a water right for the entire Project, regardless of when individual farmers actually obtained the right to irrigate their lands. *Id.* at A13. The court of appeals further held that "the district court made the same error when, in affirming the Engineer, it concluded that because each

individual Project water right had a 'priority date' of July 2, 1902, it was therefore initiated, within the meaning of § 533.085, on that same date." *Id.* at A14.[3]

The court did not review the State Engineer's factual findings on forfeiture because the district court had not ruled on them and the underlying factual evidence before the Engineer was not in the record. The court of appeals instead remanded the case to the district court to review those findings, noting that it appeared that the Engineer had imposed a burden of proof stricter than the applicable "clear and convincing evidence" standard. Pet. App. A19-A20. The court of appeals also reversed the district court in part with respect to abandonment and similarly remanded for review of the relevant factual determinations by the State Engineer. *Id.* at A16-A18, A20-A22. Judge Noonan dissented from the court of appeals' forfeiture ruling. *Id.* at A22-A24.[4]

ARGUMENT

The interlocutory decision of the court of appeals is correct and does not conflict with any decision of this Court, any other court of appeals, or any state court of

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[3] The court of appeals noted that the State Engineer and TCID had filed a petition for rehearing and rehearing en banc in *Alpine III*, arguing that the decision failed to recognize the distinction between when a water right "vested" and when appropriation was "initiated." The court found further support for its understanding that *Alpine III* governed both questions in the fact that the *Alpine III* court subsequently amended the opinion specifically to refer both to when water rights were vested and when their appropriation was initiated. Pet. App. A17-A18.

[4] The court of appeals has since applied and followed its forfeiture ruling in this case in deciding another appeal involving related issues. See *United States* v. *Alpine Land & Reservoir Co.*, 279 F.3d 1189, 1199 (9th Cir. 2002) (*Alpine V*).

last resort. The decision simply resolves a narrow question of state law pertinent to a particular water right dispute and remands the case to the district court for application of that law in light of the relevant facts. Review of that decision is accordingly unwarranted.

1. As a threshold matter, review is unwarranted because of the interlocutory posture of the case. The court of appeals identified the appropriate legal standard for determining whether the water rights of individual users of Newlands Project water are subject to forfeiture, but it did not apply those legal standards to the facts of this case. The court of appeals correctly discerned that the district court has not yet reviewed the State Engineer's factual findings respecting forfeiture, and the court of appeals properly chose to remand the case to the district court to review those factual determinations as well as his factual determinations respecting abandonment. The outcome of that review will directly affect the determination of the United States' and the Tribe's challenges to the water rights transfers ultimately at issue. Any challenge that petitioners may have to the court of appeals' interlocutory decision accordingly is not yet ripe for this Court's review. See, *e.g.*, *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (per curiam) (denying certiorari "because the Court of Appeals remanded the case," making it "not yet ripe for review by this Court"); see also *Virginia Military Institute* v. *United States*, 508 U.S. 946 (1993) (opinion of Scalia, J., respecting the denial of the petition for writ of certiorari) ("We generally await final judgment in the lower courts before exercising our certiorari jurisdiction."); see generally Robert Stern et al., *Supreme Court Practice* 195-198 (7th ed. 1993).

2. Petitioners contend that the court of appeals was wrong in its construction of state law. Nevada Pet. 8-16, 25-27; TCID Pet. 11-17. This Court, however, ordinarily "accept[s] and therefore do[es] not review, save in exceptional cases, the considered determination of questions of state law by the intermediate federal appellate courts." *Huddleston* v. *Dwyer*, 322 U.S. 232, 237 (1944). See *Supreme Court Practice*, *supra*, at 183 ("The Court uniformly declines review whenever the court of appeals has reached a reasonable and permissible result."). This case provides no occasion for the Court to deviate from its normal practice.

Petitioners suggest that review is appropriate based on this Court's action in *Leavitt* v. *Jane L.*, 518 U.S. 137 (1996) (per curiam). See Nevada Pet. 9. That exceptional case, however, posed clearly distinguishable circumstances. In *Leavitt*, this Court examined a federal court of appeals' construction of a state abortion law because that court's "extraordinary" ruling was "plainly wrong," resulted in "the total invalidation of a state-wide law," and amounted to "blatant federal-court nullification of state law." 518 U.S. at 144-145. The Court recognized that it had not previously granted certiorari solely to review a state law issue since *Steele* v. *General Mills, Inc.*, 329 U.S. 433 (1947), which involved "a federal court's equivalently clear misinterpretation of a state law of equivalent significance." 518 U.S. at 144 n.5; see *id.* at 147 (Stevens, J., dissenting).[5]

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[5] The other cases that Nevada cites (Pet. 9 n.6) do not support its request for certiorari solely to obtain review of a state law question. In *Brockett* v. *Spokane Arcades, Inc.*, 472 U.S. 491 (1985), the Court made the unexceptional observation that "we surely have the authority to differ with the lower federal courts as to the meaning of a state statute." *Id.* at 500. In the other cases, the Court merely affirmed federal court rulings on state law in the

The court of appeals' ruling in the instant case does not involve an extraordinary ruling on a controversial matter of constitutional magnitude or invalidate a state-wide law. To the contrary, the panel decision affects a very narrow range of water rights under a federal court decree. By its terms, the decision applies only to determining whether the water rights of individual users of Newlands Project water are subject to forfeiture, and not whether the rights have actually been forfeited. The decision is further narrowed by recent amendments to Nevada's forfeiture statute. See note 2, *supra*. On June 9, 1999, the Nevada legislature amended the statute to exempt surface water rights in Nevada from statutory forfeiture and excluded from that exception only water rights that were under administrative or legal challenge as of April 1, 1999. See § 7, 1999 Nev. Stat. 2634, cited at Pet. App. A7. Thus, the effect of the court of appeals' ruling on water rights other than those involved in this case is limited. Even with respect to those water rights at issue here, the practical consequences are diminished because the Nevada legislature also established a fund to compensate holders of water rights for the value of rights that were subject to an administrative or legal challenge as of April 1, 1999. See § 5(4)(e), 1999 Nev. Stat. 2633. Holders of water rights that might otherwise be

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course of reviewing federal law questions. See *United States* v. *Durham Lumber Co.*, 363 U.S. 522, 526-527 (1960) (affirming a court of appeals' state law ruling that was not "clearly erroneous or unreasonable"); *The Tungus* v. *Skovgaard*, 358 U.S. 588, 596 (1959) (upholding a court of appeals' construction of a state statute that was carefully considered and not clearly wrong); *Propper* v. *Clark*, 337 U.S. 472, 486-487 (1949) (accord); *Palmer* v. *Hoffman*, 318 U.S. 109, 118 (1943) (refusing to set aside a federal court's application of state law where there was no showing of plain error).

subject to forfeiture under the court of appeals' decision may opt to retire their water rights in accordance with that program and avoid any application of the forfeiture law to them.

3. Even if this case presented a matter of sufficient importance to warrant review, there would be no occasion to set aside the court of appeals' construction of state law. This Court does not disturb a court of appeals' construction of state law unless it is unreasonable or plainly wrong. See, *e.g.*, *United States* v. *Durham Lumber Co.*, 363 U.S. 522 (1960); *The Tungus* v. *Skovgaard*, 358 U.S. 588, 596 (1959). The court of appeals' decision here is neither. That decision reasonably construes Nevada's forfeiture law in the specific context of the Newlands Project. The court of appeals, both in *Alpine III* and the instant case, applied state law in light of its express terms and the underlying purpose of the forfeiture exemption provision, as set out by the Nevada Supreme Court in *Manse Spring*. *Alpine III*, 983 F.2d at 1496; Pet. App. A11-A12.

The court of appeals correctly recognized that Nevada's forfeiture-exemption provision is intended to insulate from forfeiture the pre-1913 rights of water users. Nev. Rev. Stat. Ann. § 533.085(1) (Michie 1995). Thus, in determining when "appropriations have been initiated" (*ibid.*), the statute requires the court to look not at when the United States acquired the right to store water for the Project, but at when the individual water user whose right might be subject to forfeiture first obtained the right to irrigate his land. *Alpine III*, 983 F.2d at 1496. That reasonable interpretation places Newlands Project water users in the same position as holders of water rights elsewhere in the State. It also avoids the anomalous result of granting a forfeiture exemption to all users of Project water—some of whom

did not obtain their water contracts and apply water to land until the 1940s and 1950s (see *Alpine II*, 878 F.2d at 1221 n.7)—based on the United States' actions in 1902. See *Alpine III*, 983 F.2d at 1496; Pet. App. A12-A16.

The court of appeals correctly rejected petitioners' view that the actions of the United States in acquiring a water right for the Project as a whole should be treated as the actions of the individual water users in "initiat-[ing]" their own appropriations. Pet. App. A12-A13. As the court explained, that construction "would protect water-right holders who had done nothing at all to acquire water rights as of the date of the forfeiture statute" and would insulate from forfeiture those who had full notice "that any water rights they acquired would be subject to forfeiture." *Id.* at A13. In any event, even if petitioners' interpretation provided a plausible alternative construction of state law, the fact remains that the court of appeals' construction, grounded in Nevada case law and carefully analyzed in two separate opinions, is reasonable and certainly not plainly wrong.

Petitioners also assert that the decision nullifies state water law and conflicts with the Nevada Supreme Court's decision in *Manse Spring*. Nevada Pet. 12-16; TCID Pet. 11-17. Those arguments are without merit. The *Alpine III* decision expressly recognized that "[d]etermining when [water] rights vested is a matter of Nevada law." 983 F.2d at 1495. Both the *Alpine III* court and the court of appeals in the instant case expressly relied on the Nevada Supreme Court's ruling in *Manse Spring* to discern the purpose of Section 533.085 of the Nevada Revised Statutes Annotated. Indeed, when the Tribe in *Alpine III* moved to certify the threshold forfeiture question to the Nevada

Supreme Court, the Nevada State Engineer opposed certification, and the court of appeals declined to certify "[b]ecause the law of Nevada is clear." *Alpine III*, 983 F.2d at 1491 n.3.[6]

4. Petitioners also contend that review is warranted because the decision is a collateral attack on the *Orr Ditch* decree and conflicts with this Court's ruling in *Nevada* v. *United States*, 463 U.S. 110 (1983). Nevada Pet. 21-23; TCID Pet. 7-11. Petitioners argue that the *Orr Ditch* decree confirmed a right in the United States to water for the Newlands Project with a priority date of July 2, 1902, and that *Nevada* ruled that the individual users of Project water were the successors to the right affirmed to the United States in the *Orr Ditch* decree. The court of appeals, however, expressly rejected the contention that its decision concerning the meaning of the forfeiture statute was determined by the water rights' priority date. The court "agree[d] with the Engineer and the district court that the priority date for all of the rights at issue in this case is 1902." Pet. App. A14. The court explained, however, that its holding "did not concern a priority date" but rather concerned "the forfeiture exemption provided by § 533.085." *Ibid.* For the same reasons, the decision does not conflict with this Court's decision in *Nevada*.

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[6] There is also no merit to Nevada's assertion (Pet. 13) that the validity of the court of appeals' decision is suspect because the panel consisted of judges from California and Arizona. This is not a case of state law being construed by "'outsiders' lacking the common exposure to local law which comes from sitting in the jurisdiction." *Lehman Bros.* v. *Schein*, 416 U.S. 386, 391 (1974). *Alpine III*, which provides the rule for the instant decision, was authored by Judge Brunetti, who practiced law in Nevada for 21 years prior to his appointment to the bench in 1985. See 2 *Almanac of the Federal Judiciary* 51 (2002).

Nevada held that water users in the Newlands Project succeeded to the rights confirmed in the *Orr Ditch* decree and that res judicata principles precluded the United States from using those rights for other purposes. This case does not address the priority date of the water rights in question, and it does not work any reallocation of rights confirmed in the decree.

5. Finally, petitioners assert that the decision improperly applies the concept of reasonable investment-backed expectations to Nevada water law and conflicts with *Palazzolo* v. *Rhode Island*, 533 U.S. 606 (2001). See Nevada Pet. 17-21; TCID Pet. 18-19. The court of appeals, however, made no ruling regarding the application of takings law to Nevada's forfeiture statute. Contrary to petitioners' assertions, the court did not rule on background principles of state law and did not "apply" the doctrine of reasonable investment-backed expectations to Nevada water law. The court simply used the "modern parlance" of takings law, specifically the terminology of reasonable investment-backed expectations, to explain its understanding of the purposes of the Nevada legislature in enacting the forfeiture exemption provision. See Pet. App. A12. The court's use of takings parlance merely elucidated its understanding of the legislature's concerns and how the forfeiture exemption should be construed in light of those concerns. Because the court of appeals did not rule in any manner on the application of takings jurisprudence to water rights at the Newlands Project, its decision does not and cannot conflict with *Palazzolo*, which addressed distinct issues of just compensation law that do not affect the outcome of this case. See, *e.g.*, *Black* v. *Cutter Labs.*, 351 U.S. 292, 297 (1956) ("This Court * * * reviews judgments, not statements in opinions.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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